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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL CADENA,

Defendant and Appellant.

E048018

(Super.Ct.No. FWV033647)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond L. Haight, III, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Following a probation revocation hearing, the trial court found true that defendant Manuel Cadena had violated the terms of his probation when he had tested positive for marijuana use. The trial court thereafter terminated defendant's probation and imposed the previously suspended sentence of five years. Defendant appeals from the judgment,

essentially challenging the sufficiency of the evidence. We reject his contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In August 2005, defendant pled nolo contendere to being a felon in possession of ammunition (Pen. Code, § 12316, subd. (b)(1)).¹ He also admitted that he had suffered two prior prison terms (§ 667.5, subd. (b)). In return, the five-year sentence was suspended, and defendant was placed on formal probation on various terms and conditions. One of the conditions of probation was that defendant was to refrain from using or possessing any controlled substance.

Defendant subsequently violated the terms and conditions of his probation multiple times. Specifically, defendant violated his probation in December 2005, when he admitted to using marijuana and methamphetamine. In January 2006, he admitted to using marijuana. In November 2007, a box cutter knife was discovered in defendant's bedroom. In December 2007, defendant was found to have gang clothing and insignias in his possession.

On June 16, 2008, following a probation revocation hearing on all the above violations pursuant to *People v. Vickers* (1972) 8 Cal.3d 451 (*Vickers*), defendant admitted that he possessed gang clothing and insignia, the court found him to be in violation of his probation. It thereafter reinstated probation.

¹ All future statutory references are to the Penal Code unless otherwise stated.

In January 2009, Defendant again violated the conditions of his probation when defendant had tested positive for THC (marijuana). At the subsequent *Vickers*² hearing, defendant's probation officer, Fortunato Nicolas, testified that on January 13, 2009, he went to defendant's home for a routine compliance check. He found no evidence that defendant was in noncompliance. Nicolas instructed defendant to come to the probation office the following day, January 14.

On January 14, defendant telephoned Nicolas and told him he was unable to come in that day as he had a job interview. Defendant then agreed to come in the following day, January 15. Nicolas opined that probationers sometimes delay drug testing in hope that the drug will clear out of their system prior to the test.

On January 15, Nicolas gave defendant a urine test at the probation office. Defendant tested positive for THC. Nicolas told defendant that he had tested positive for THC and asked defendant to sign the test results. Defendant refused to sign the test results.

The test results were admitted into evidence as Exhibit No. 1. The urine test is a presumptive test and can produce false positives for certain drugs, such as cocaine. A secondary test is recommended to confirm the presumptive test. Nicolas did not administer the secondary test in this case. Nicolas did not save any of the urine for subsequent testing. On February 11, 2009, Nicolas asked defendant about the positive drug test result. Defendant declined to comment. Nicolas also testified in regard to

² *People v. Vickers* (1972) 8 Cal.3d 461.

defendant's four prior probation violations, as noted previously, and opined that defendant "keeps on using drugs."

Following argument, the court found defendant had violated the drug condition. While recognizing that the current probation violation for marijuana use, "taken alone . . . wouldn't justify the sentence," the court found, "[W]hen you look at the pattern, . . . [t]here's really been no adequate performance on probation throughout the time period." It terminated defendant's probation and imposed the previously suspended five-year sentence.

II

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting that we undertake an independent review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his two-page supplemental brief, defendant challenges the sufficiency of the evidence, essentially claiming the drug test was unreliable.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

People v. Kurey (2001) 88 Cal.App.4th 840 held that the substantial evidence test is the proper standard for appellate review of the judgment following a probation

revocation hearing where the appellant claims the evidence was insufficient. (*Id.* at p. 848.) In *Kurey*, the court limited its inquiry to considering whether, “upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court’s decision.” (*Ibid*, fn. omitted.) Also, we afford great deference to the factual conclusions reached by the trial court; ordinarily, conflicting evidence will be resolved in favor of the judgment. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The same standard of review applies when a conviction rests primarily on circumstantial evidence. (*People v. Perez* (1992) 2 Cal.4th 1117, 1124; see also *People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

We must defer to the trial court’s conclusions regarding the credibility of the evidence. “Our role in considering an insufficiency of the evidence claim is quite limited. We do not reassess the credibility of witnesses [citation], and we review the record in the light most favorable to the judgment” (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382). Defendant’s probation officer testified that he had administered the drug test to defendant and that it was positive for THC. Defendant presented no evidence to either contradict this or show that he was drug free but attempted to discredit Nicolas’s testimony due to his failure to administer a secondary test. There was no credible evidence of any irregularities in either the chain of custody or the sample. Moreover, there was evidence to show that defendant had refused to sign the test results or comment about them. There was no evidence that he claimed the test was wrong or that he should be retested because it was a false positive. From this evidence,

the trial court could reasonably infer that defendant had violated his probation by using drugs.

There was nothing in the evidence to suggest that the trial court's conclusion was inherently irrational; accordingly, we must reject defendant's contention that the trial court should have disbelieved the testimony offered by the prosecution and believed the testimony supporting the defense. The evidence was sufficient to support the trial court's conclusion that defendant violated the terms and conditions of his probation. (*People v. Kurey, supra*, 88 Cal.App.4th at pp. 848-849).

We have now concluded our independent review of the record and find no arguable issues.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
Acting P.J.

We concur:

GAUT
J.

KING
J.